Southwest Bankruptcy Conference

ABI Talks

Jason S. Brookner, Moderator
Gray Reed & McGraw LLP | Dallas

Four Legislative Changes for Third-Party Releases
Thomas J. Salerno
Stinson LLP | Phoenix

"DIP Order Creep": What Can You Get Now?
Jennifer C. Hagle
Sidley Austin LLP | Los Angeles

"Person Aggrieved" and Bankruptcy Appeals
Jordan A. Kroop
Pachulski Stang Ziehl & Jones LLP | New York

State of the Market
Adam T. Titus
Alvarez & Marsal | Scottsdale, Ariz.

LUNCHEON PLENARY

2023

General Caveats

- Jurisdiction/venue may play important role as availability of certain types of relief can vary across jurisdictions, venues, and even judges within jurisdictions
- Market-testing and lack of alternatives may also be key in determining how far lenders/debtors can push in negotiating DIP financing

Roll-Ups – Then and Now

- **Historically disfavored, but now relatively commonplace in practice**
  - Roll-ups no longer limited to ABL facilities; may cover variety of bridge and prepetition debt facilities
  - Lenders have become more aggressive with respect to roll-up provisions because of relative risk and to incentivize lenders to participate in DIP financing
  - Courts will still scrutinize roll-up provisions but are willing to approve them and acknowledge that such provisions are becoming routine requirements of postpetition lenders
- **Automatic vs. Creeping**
  - May be automatic upon DIP lenders making DIP facility available rather than "creeping" (i.e., occurring on dollar-for-dollar basis as new funds are provided) – *see, e.g.*, *In re Chesapeake Energy Corp.*, Case No. 20-33233 (DRJ) (Bankr. S.D. Tex.)
  - Typically, portion of roll-up is approved as part of interim relief to correspond to new-money loans authorized in interim order, with remainder approved in final order (whether automatic or creeping)
- **Ratios**
  - 1:1 roll-ups used to be standard; now higher ratios of 3:1 or higher are not out-of-bounds – *see, e.g.*, *In re Genesis Care Pty Ltd.*, Case No. 23-90614 (DRJ) (Bankr. S.D. Tex.) (approving 3:1 roll-up)
- **Limitations**
  - Court may require reservation of rights permitting challenges to roll-up if prepetition debt is challenged
  - Liens securing rolled-up debt may not include all DIP Collateral

Strategic Roll-Ups/Refinancings

- **Sponsors and lenders becoming more aggressive in requests for approval of strategic roll-ups and refinancings, including requests for:**
  - Approval in interim order of roll-up/refinancing of prepetition emergency bridge (aka "pre-DIP") financing provided in express expectation of such roll-up/refinancing – *see, e.g.*, *In re Virgin Orbit Holdings, Inc.*, Case No. 23-10405 (KBO) (Bankr. D. Del.); *In re Cyxtera Techs., Inc.*, Case No. 23-14853 (JKS) (Bankr. D.N.J.)
  - Approval of refinancing of prepetition debt on indefeasible basis, without reserved challenge rights, in interim order – *see In re Instant Brands Acquisition Holdings Inc.*, Case No. 23-90716 (DRJ) (Bankr. S.D. Tex.) (approving use of DIP financing proceeds to pay off $55 million note issued to debtors' sponsor and expressly providing that such payment was not subject to any reserved challenge rights)
  - Approval of roll-ups or refinancings that include make-whole premiums (in effort to preempt challenges to allowability of such premiums)
    - Practice remains controversial, and outcomes vary across cases – *compare, e.g.*, *In re Diebold Holding Co., LLC.*, Case No. 23-90602 (DRJ) (Bankr. S.D. Tex.) (refinancing of prepetition debt that included make-whole premium was not challenged); *In re McDermott Int'l, Inc.*, Case No. 20-30336 (DRJ) (Bankr. S.D. Tex.) (same), *with, e.g.*, *In re SiO2 Med. Prods., Inc.*, Case No. 23-10366 (JTD) (Bankr. D. Del.) (prepetition prepayment fee was expressly excluded from roll-up by agreement of parties after creditors' committee objected to its proposed inclusion; parties subsequently reached settlement); *In re Bed Bath & Beyond Inc.*, Case No. 23-13359 (VFP) (Bankr. D.N.J.) (approving roll-up of prepetition make-whole premium subject to challenge rights; parties subsequently reached settlement)

Liens on Avoidance Actions/Avoidance Action Proceeds

- **Liens on Avoidance Actions (= Control)**
  - Still unusual, but not unheard of – *see, e.g.*, *In re Mountain Express Oil Co.*, Case No. 23-90147 (DRJ) (Bankr. S.D. Tex.); *In re AmeriMark Interactive, LLC*, Case No. 23-10438 (TMH) (Bankr. D. Del.)
  - May be subject to marshalling/"last look" provisions dictating that DIP lenders must first seek to recover from other DIP Collateral before looking to avoidance action proceeds
- **Liens on Avoidance Action Proceeds**
  - Typically included in DIP Collateral (while creditors' committees continue to push back on this point, granting of liens on avoidance action proceeds is now common)
  - May be subject to marshalling/"last look" provisions dictating that DIP lenders must first seek to recover from other DIP Collateral before looking to avoidance action proceeds
  - May be excluded from DIP Collateral securing rolled-up prepetition debt

Hard-Wiring of Case Timing/Trajectory

- **Milestones**
  - May cover sale process, operational restructuring events, exit financing/rights offering approvals, in addition to standard plan confirmation milestones
  - May include creative remedies for DIP lenders if milestones are not satisfied (e.g., additional reporting obligations, appointment of CRO, board observer rights, etc.)
- **Ties to Sale Process/RSA/Exit Facilities**
  - More elements of the bankruptcy case may be hard-wired into the DIP financing if the necessary parties can reach consensus prior to case commencement, including:
    - Established sale process and agreement regarding lenders' credit bidding rights
    - Plan terms (pursuant to RSA)
    - Committed exit facilities
    - Authorization to pay unsecured creditors' prepetition and postpetition professional fees and expenses pursuant to prepetition RSA (without requiring showing of substantial contribution or assumption of or entry into RSA/reimbursement agreements) – *see, e.g., In re Qualtek Servs. Inc.*, Case No. 23-90584 (CML) (Bankr. S.D. Tex.) (authorizing such payments subject to same notice-and-objection procedures governing prepetition secured lenders' adequate protection payments); *but see, e.g.*, *In re Mallinckrodt PLC*, Case No. 20-12522 (JTD) (Bankr. D. Del.) (court initially declined to approve payment of unsecured creditors' professional fees absent request to assume or enter into agreements giving rise to reimbursement rights, then later granted such approval – subject to additional safeguards – after debtors filed motion to assume and enter into reimbursement agreements), *aff'd sub nom. City of Rockford v. Mallinckrodt PLC (In re Mallinckrodt PLC)*, Civ. No. 21-167-LPS (D. Del.); *In re FirstEnergy Sols. Corp.*, Case No. 18-50757 (AMK) (Bankr. N.D. Ohio) (unsecured creditors filed substantial contribution application to obtain payment of professional fees pursuant to RSA after dispute arose regarding creditors' right to payment of such fees pursuant § 363(b))

Hard-Wiring of Case Timing/Trajectory (cont'd)

- **Defaults**
  - May include specific lender concerns in addition to traditional events of default – *see, e.g.*, *In re SiO2 Med. Prods., Inc.*, Case No. 23-10366 (JTD) (Bankr. D. Del.) (approving DIP credit agreement providing for event of default based on failure to retain certain numbers of specified key personnel)
- **Waivers**
  - While section 506(c) surcharge waivers continue to generally be subject to entry of final order, some interim orders have clarified that such waivers are immediately effective as to costs or expenses incurred before entry of final order, narrowing scope of potential disputes – *see, e.g.*, *In re Murray Energy Holdings Co.*, Case No. 19-56885 (JEH) (Bankr. S.D. Ohio) (interim order provided that § 506(c) waiver was subject to any provisions of Final Order "*with respect to costs or expenses incurred following the entry of such Final Order*" (emphasis added)); *In re Invacare Corp.*, Case No. 23-90068 (CML) (Bankr. S.D. Tex.) (same)

Hard-Wiring of Case Timing/Trajectory (cont'd)

- **Equity-Linked Features**
  - May take a variety of forms, including:
    - Option (of either debtors or lenders) to elect between cash payment and conversion of DIP loans into reorganized equity, or to purchase reorganized equity, based on specified estimated total enterprise value, at a discount to plan value, or at some other fixed valuation – *see, e.g.*, *In re SAS AB*, Case No. 22-10925 (MEW) (Bankr. S.D.N.Y.) (DIP lenders were entitled to convert DIP loans into reorganized equity or pay cash to purchase reorganized equity so long as reorganized debtors had collective enterprise value of at least $3.2 billion, calculated pursuant to specified methodology); *In re Avianca Holdings S.A.*, Case No. 20-11133 (MG) (Bankr. S.D.N.Y.) (debtors could elect to pay junior DIP facility (and related fees) in reorganized equity)
    - Right to purchase up to a specified percentage of any new equity interests issued under a plan of reorganization on the same terms as any third party providing equity financing – *see, e.g.*, *In re SAS AB*, Case No. 22-10925 (MEW) (Bankr. S.D.N.Y.) (DIP lenders had right to purchase up to 30% of new equity interests issued under plan on same terms available to third party)
    - Right to payment of termination fees (in cash or equity) if debtor terminates DIP lenders' option to exercise equity conversion rights – *see, e.g.*, *In re SAS AB*, Case No. 22-10925 (MEW) (Bankr. S.D.N.Y.) (DIP lenders' equitization rights were terminable upon payment of fees totaling approximately $47.72 million)
    - Right to payment of other fees (including DIP financing backstop fees) in reorganized equity – *see, e.g.*, *In re Qualtek Servs. Inc.*, Case No. 23-90584 (CML) (Bankr. S.D. Tex.) (in exchange for providing new-money DIP loans and exit financing commitments, DIP lenders were entitled, subject to plan confirmation, to their respective *pro rata* allocations of 50% of reorganized equity interests, subject to dilution by certain warrants and MIP)
  - May be subject to challenge as impermissible *sub rosa* plan – *see In re LATAM Airlines Grp. S.A.*, 620 B.R. 722 (Bankr. S.D.N.Y. 2020) (refusing to approve equity-linked DIP financing based on concerns that, among other things (including violation of absolute priority rule), it constituted an improper *sub rosa* plan)
  - Outcomes may vary depending on specific facts of case, including presence/absence of:
    - Objections/support from third-party stakeholders
    - Market testing
    - Credible justification for economic terms
    - Termination rights for debtors

Interest/Fees

- **Market-driven, but lenders may be (and have been) more aggressive on requesting more/higher fees, at least where no alternatives are available**
  - Alternatives often unavailable due to debtors' desire to avoid priming fights and intercreditor agreement and/or RSA restrictions on competing DIP financing offers)

Oldies But Goodies

- **Automatic perfection of DIP liens**
- **Stipulations, releases and waivers**
  - Stipulations as to amount of prepetition secured parties' claims and extent, validity, and priority of their liens (subject to specified challenge period)
  - Broad releases and waivers by debtors of claims and defenses relating to DIP financing and prepetition secured debt (subject to specified challenge period)
  - Waivers of marshaling rights and rights under sections 506(c) and 552(b) (generally subject to final order except as previously noted with respect to section 506(c))
- **Budget (subject to limited permitted variances) and right to approve future supplements to budget**
- **Right to payment of prepetition and postpetition professional fees**
- **Restrictions on use of DIP financing proceeds**
  - Generally may not be used in manner adverse to DIP or prepetition secured parties other than pursuant to limited investigation budget for creditors' committee
- **Right to exercise remedies upon shortened notice**

WHO IS A "PERSON AGGRIEVED"?

Jordan Kroop
Pachulski Stang Ziehl & Jones

Who is a" Person Aggrieved"?

HYPOTHETICAL APPELLANT

Not a creditor

Potential recovery as old equity

Potential defendant against estate cause of action

The Big Idea

Bankruptcy courts are not Article III creatures bound by traditional standing requirements. But that does not mean disgruntled litigants may appeal every bankruptcy court order willy-nilly. Quite the contrary … Allowing each and every party to appeal each and every order would clog up the system and bog down the courts. Given the specter of such sclerotic litigation, standing to appeal a bankruptcy court order is, of necessity, quite limited.

Furlough v. Cage (In re Technicool Sys.), 896 F.3d 382 (5th Cir. 2018)

Only a "person aggrieved" possesses prudential standing to appeal a bankruptcy court order and "only those directly, adversely, and financially impacted by a bankruptcy court order may appeal it"—only such a person is a person aggrieved. "The order must burden his pocket before he burdens a docket." *Technicool*

"A person aggrieved by an order of a referee may … file with the referee a petition for review …"

11 U.S.C. § 67(c) (1976), repealed in 1978 with the enactment of the Bankruptcy Code

WHO IS A "PERSON AGGRIEVED"?

The test—which we have repeatedly described as "'more exacting' than the test for Article III standing"—holds that an appellant must show it was "directly and adversely affected pecuniarily by the order of the bankruptcy court." "In essence, bankruptcy standing requires 'a higher causal nexus between act and injury'" than traditional standing, one that
we have repeatedly deployed and that best deals with the unique posture of bankruptcy actions.

NexPoint Advisors, L.P. v. Pachulski Stang Ziehl & Jones, L.L.P. (In re Highland Capital Mgmt., L.P.), ____ F.4th ___ (5th Cir. 2023)

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ARGUMENTS AGAINST

- ***Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014).**
- **Bankruptcy Code § 1109**

Lexmark

Litigants have argued that the "person aggrieved" standard did not survive *Lexmark* and that traditional Article III standing requirements—which are putatively less restrictive—should apply.

Lexmark involved standing in a false advertising claim under the Lanham Act. SCOTUS noted that courts may not "limit a cause of action that Congress has created merely because 'prudence' dictates."

Thus, the argument goes, the "person aggrieved" standard used by appellate courts in bankruptcy cases is illegitimate because it limits a cause of action that Congress has created in the Bankruptcy Code.

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Lexmark

But the argument that *Lexmark* somehow represents a sea change in prudential standing—particularly in bankruptcy cases—has never prevailed. Perhaps this is because the "person aggrieved" standard is specifically tailored to bankruptcy appeals, whereas *Lexmark* has literally nothing to do with bankruptcy or bankruptcy appeals.

5th Circuit in *NexPoint v. Pachulski:*

> *Lexmark* focuses solely on standing under the Lanham Act, and the year after *Lexmark* was decided, we expressly held in *Superior MRI Services Inc. v. Alliance Healthcare Services, Inc.* that *Lexmark* "deals *only* with the zone-of-interests test and not with the requirement that a party assert its own rights." In other words, this Court found *Lexmark* to reach only circumstances analogous to those at issue in *Lexmark*, rather than broadly modifying—or undermining—*all* prudential standing concerns, such as the one animating the "person aggrieved" standard in bankruptcy appeals.

Even the recent *East Coast Foods* case in the 9th Circuit, which did discuss Article III standing as part of its "person aggrieved" analysis, did not vitiate the "person aggrieved standard. Neither did the 6th Circuit recently in the *Shubert* case. It is still good law in every circuit in the nation.

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Section 1109

"A party in interest, including … a creditor … may raise and may appear and be heard on any issue in a case under this chapter."

5th Circuit in *NexPoint v. Pachulski:*

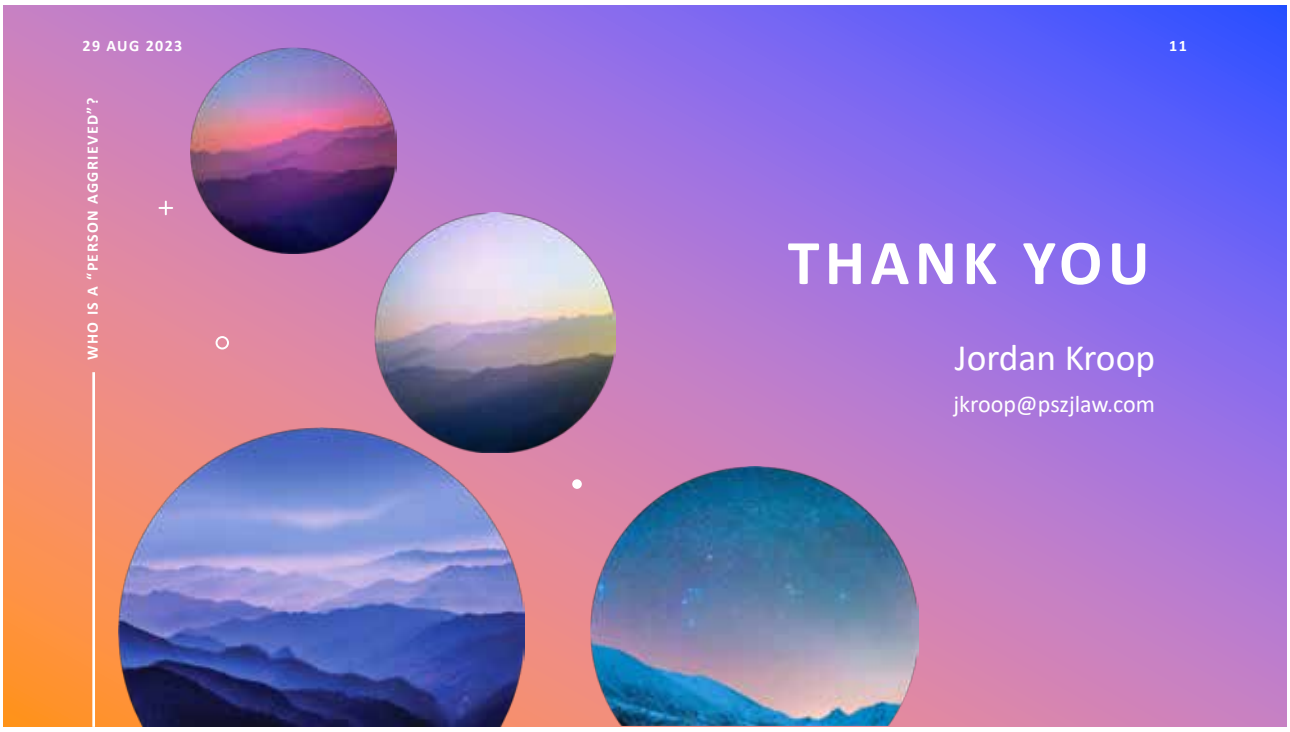
> In lay terms, § 1109(b) speaks to one's standing to appear and be heard before the bankruptcy court, a concept distinct from standing to appeal the merits of a decision. … "Because Section 1109(b) 'expands the right to be heard [in a bankruptcy proceeding] to a wider class than those who qualify under the "person aggrieved" standard,' courts considering the issue have concluded that 'merely being a party in interest is insufficient to confer appellate standing.'" We agree.

Every other circuit court in the country to consider the issue also agrees.

Summary

The "person aggrieved" standard has been explicitly reaffirmed in the Fifth, Sixth, and Ninth Circuits this year alone in the face of arguments based on *Lexmark* and Bankruptcy Code § 1109.

Without a financial stake in the outcome of the appeal, without any pecuniary interest that would be directly and adversely affected by the bankruptcy court order or the appeal of it, our hypothetical appellant is the poster child for why the "person aggrieved" principle exists.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WHO IS A "PERSON AGGRIEVED"?
THANK YOU
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Current Status of Debt Markets

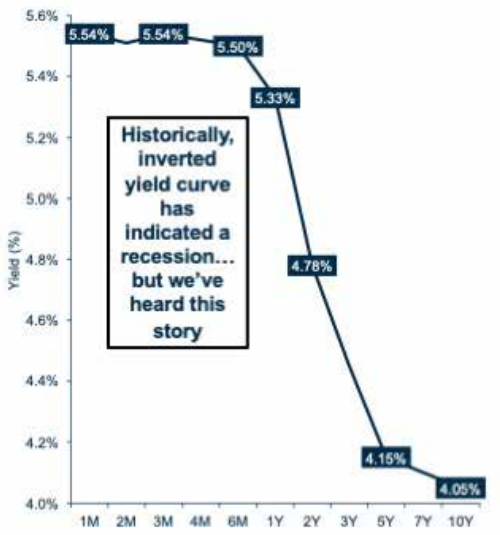
Inflation Beginning to Strain the Consumer	▪ Inflation expected to remain above Fed Target ▪ Higher costs led to record high consumer debt
High Interest Rates Deteriorate Credit Metrics	▪ Higher rates have dampened liquidity ▪ Nearly 400 downgrades in last twelve months
Debt Markets Remain Cautious	▪ New issuances largely on pause ▪ Expensive to secure new debt
Equity Markets Showing Signs of Weakness	▪ Markets had strong recovery in 1H'23 ▪ Beginning to stall; down 5% through Aug
Restructuring Market Begins to Heat Up	▪ 28 defaults YTD'23 vs. 11 defaults in 2022 ▪ Distressed loans up over 300% since 2021

Inflation Cooling; Markets Unsure of What's Next

S&P 500 grew slowly as inflation eased; bond markets showing near term risk with higher yields on shorter duration bonds

S&P 500 Performance

Inverted Treasury Yield Curve

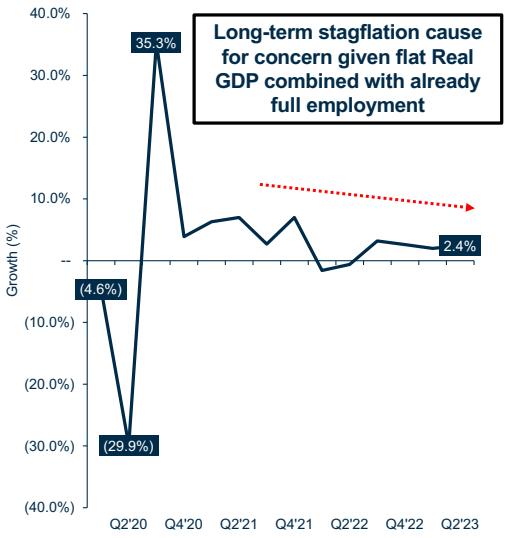


Source: LCD Comps

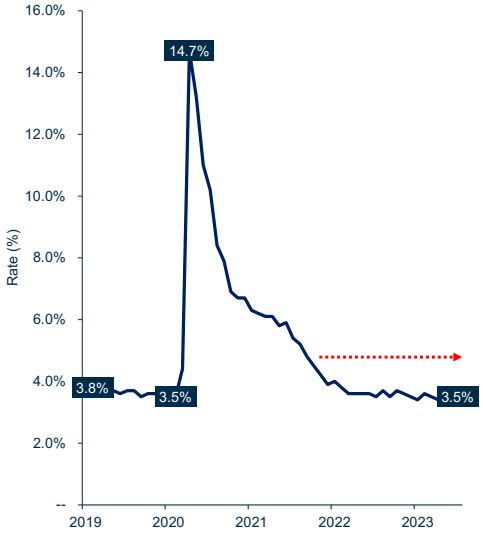
Unemployment Holding Strong Despite Weak Growth

Real GDP relatively flat while unemployment remains low presenting possibility for full employment recession

Increase (Decrease) in Real GDP (1)



Unemployment Rate (2)

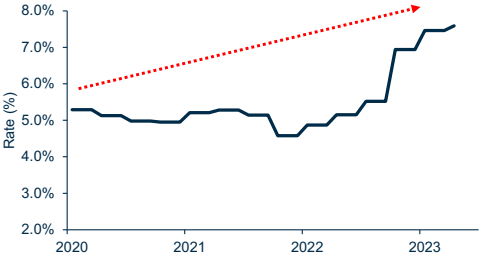


Source: WSJ, Reuters
(1) Economic growth from one period to another, adjusted for inflation or deflation.
(2) Number of job-seeking unemployed people as a percentage of the labor force.

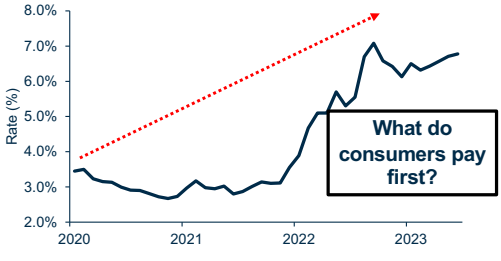
As Danger Looms, Consumer Debt Continues to Grow

Higher debt balances may lead to lower spending if recession comes to fruition

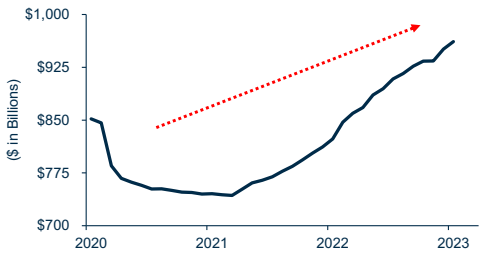
US Auto Loan Rates



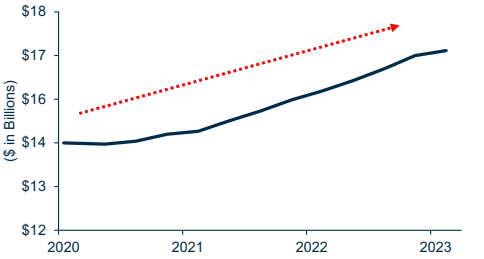
US Mortgage Rates



Total US Credit Card Debt



Total US Household Debt

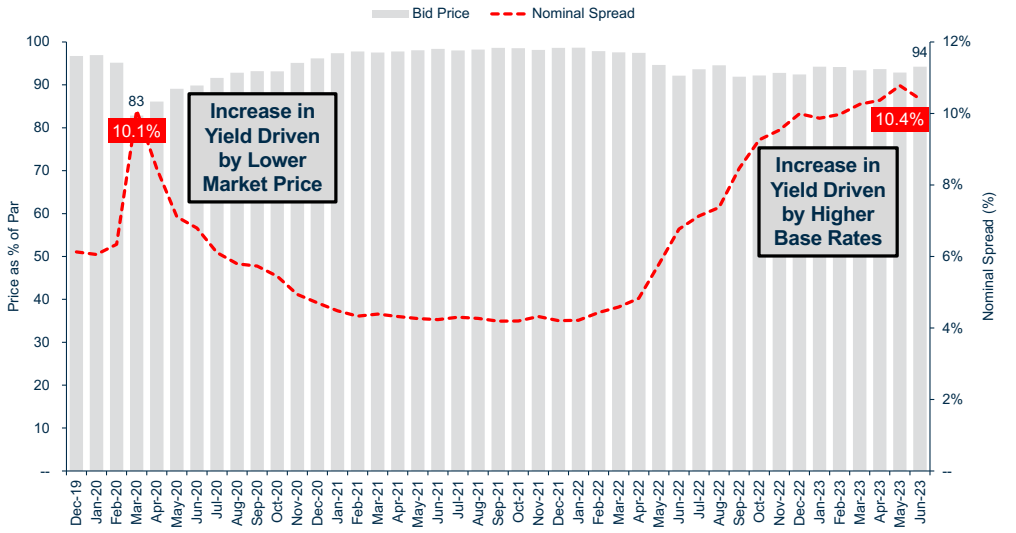


Source: WSJ & Manheim Vehicle Price Index

Current Borrowing Cost at Pandemic Peak Levels

Rising rate environment is making it expensive to issue new debt; investors demanding same yield as peak Covid scare

Leveraged Loan Index Yields



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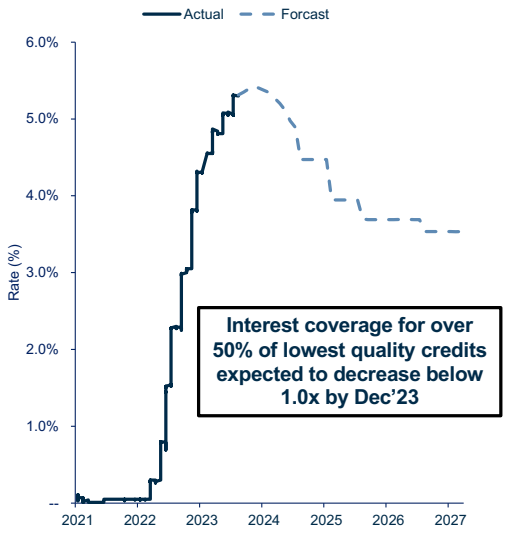
Source: LCD Comps

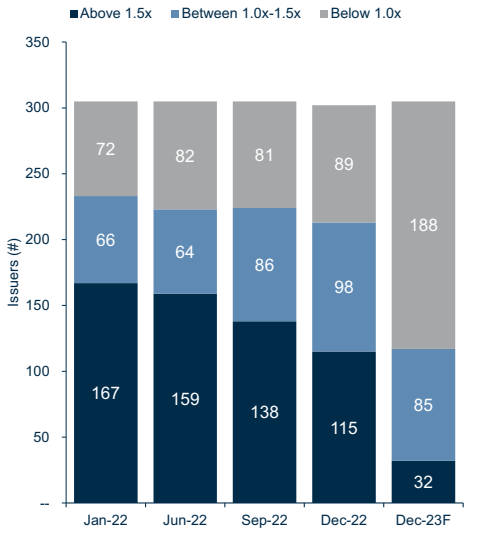
Rates to Remain Higher for Longer

Rates expected to remain high into the foreseeable future; cash flows in excess of interest payments will continue to decrease

Monthly SOFR (2022-2024E)



Interest Coverage on B- & Lower Issuers (1)



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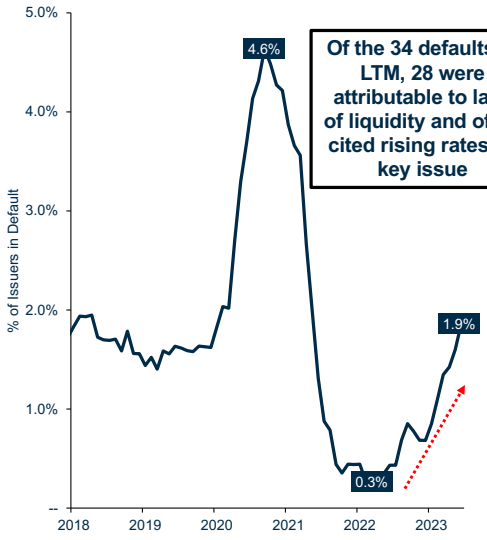
Source: Moody's; LCD
(1) Interest coverage is defined as Adjusted EBITDA less capex over interest expense

Distress & Defaults on the Rise Along with Rates

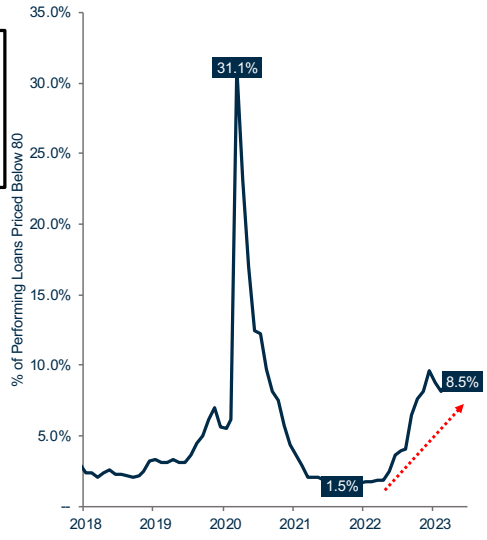
Higher interest rates are driving lower free cash flow resulting in more companies being over levered, driving down the price of loans and increasing defaults

Default Rate (Issuer Count) (1)



Of the 34 defaults in LTM, 28 were attributable to lack of liquidity and often cited rising rates as key issue

Distressed Ratio (Issuer Count) (2)



Source: LCD Comps
(1) Count of defaulted issuers in the last 12 months divided by total issuers not in defaults 12 months ago
(2) Percent of performing loans priced below 80

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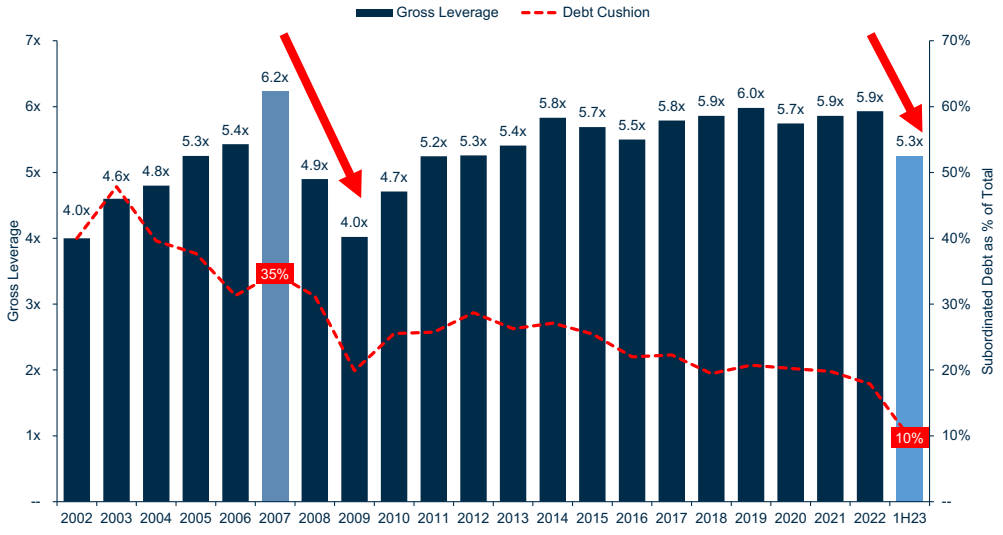
Leverage Decreasing in Recent Transactions

Total leverage decreasing from historical averages; lower appetite for junior debt

LBO Leverage and Debt Cushion (1)



Source: LCD Comps
Note: Data through June 30, 2023; based on issuers with EBITDA of $50M or greater
(1) Debt cushion: the share of debt that is subordinated to the first-lien term loans

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Stringent Credit Conditions Resulting in Fewer Deals

Lender's balking at fixed rate high yield bonds in favor of variable rate leverage loans to reduce further interest rate

New Issuance – Leveraged Loans & High Yield

Source: LCD Comps
Note: 2023F calculated as annualized YTD Jul'23
(1) GFC: Global Financial Crisis

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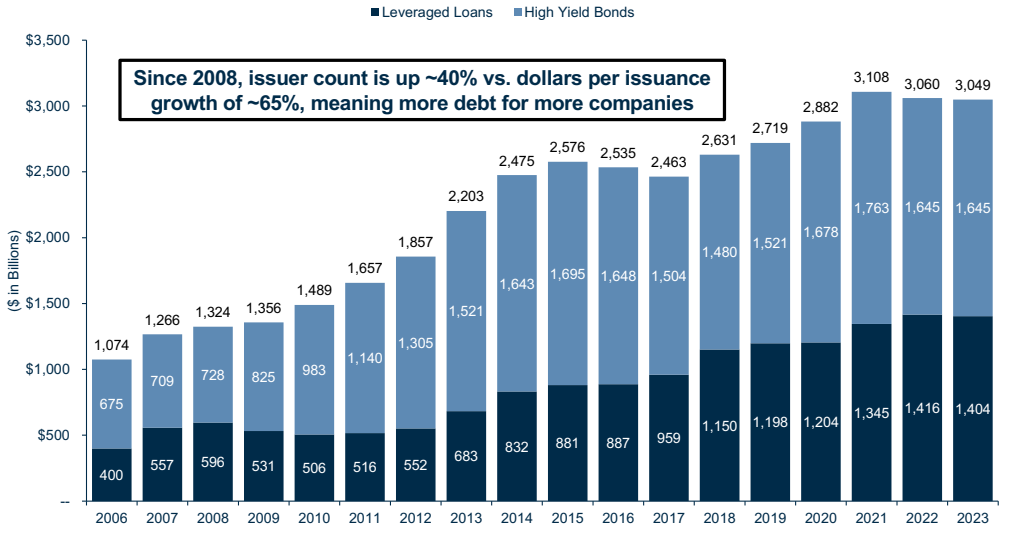
Outstanding Amount Flattening; Still Near Record Levels

Leveraged loans continue to increase their share of market as fixed rate high yield bonds fall out of favor

Total Leveraged Debt Outstanding



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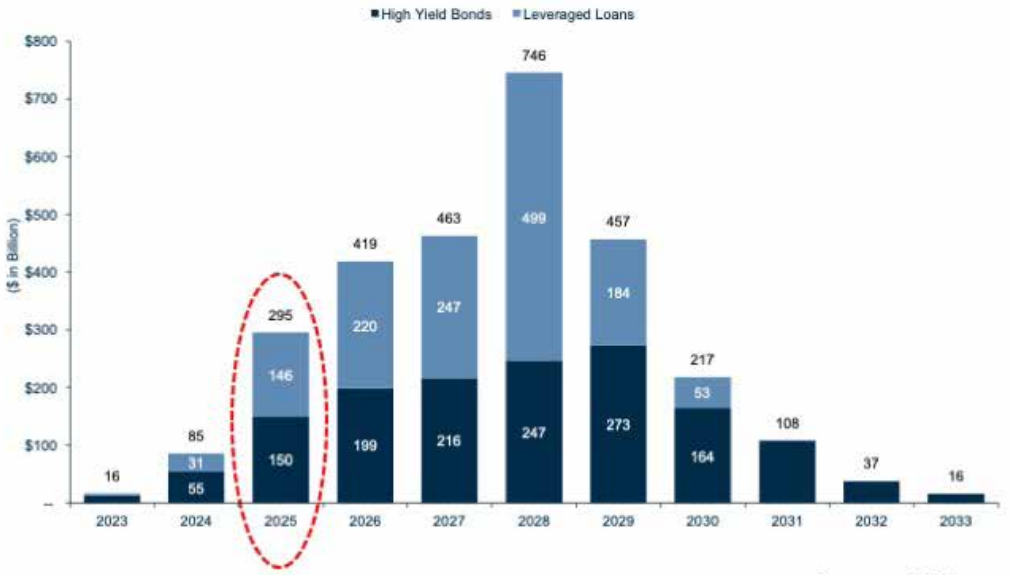
Source: LCD Comps

Maturity Wall May Be Closer Than It Appears

Over levered companies with '25 maturities must execute significant cost reductions in the near term in order to execute a refinancing

Leveraged Loan & High Yield Bond Maturity Wall



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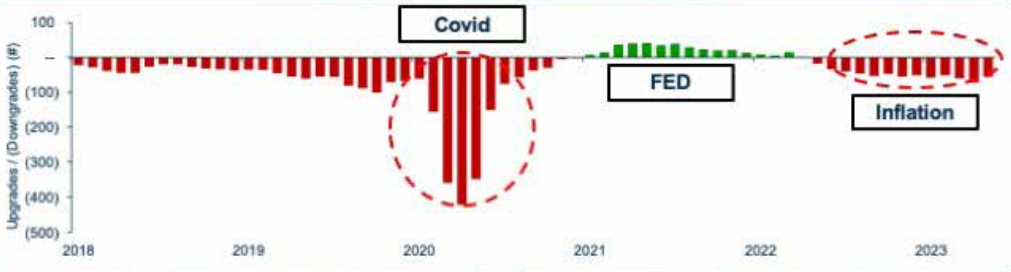
Source: LCD Comps

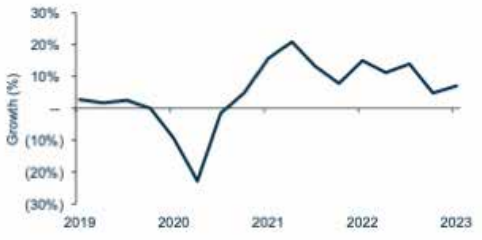
Pullback from Covid Relief Catching Up to Credits

End of stimulus checks, loan forbearances, and eviction moratoriums are starting to affect companies' bottom lines

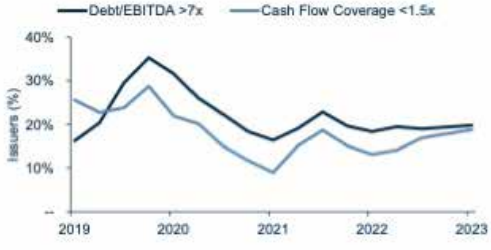
Net Rolling 3-Month S&P Upgrades & Downgrade



Quarterly EBITDA Growth



High Leverage/Low Cash Flow Issuers



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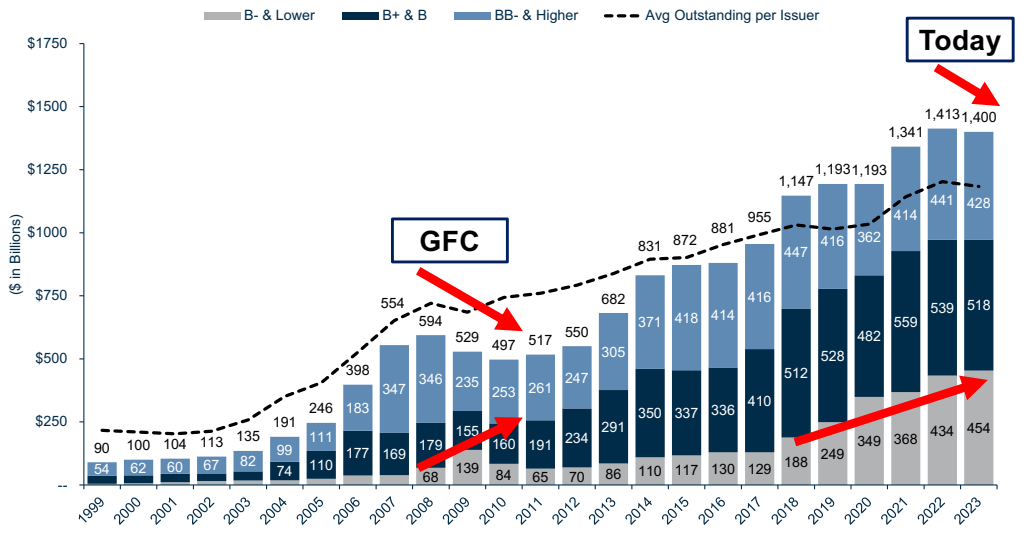
Source: LCD Comps

Trouble Looms as Riskiest Loans Take Market Share

The trend of overall outstanding loans decreasing while B- and lower loans increase their share is following the same pattern as the Great Financial Crisis

Leverage Loan Index Outstanding by Credit Rating



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Experts Remain Uncertain of Prospective Recession

"What the market's now pricing is a soft landing – a lot has to go right for that, and the risks are in one direction"
Alex Brazier, BlackRock Jun'23

"If base rates remain this elevated for an extended amount of time, then what you will find is a maturity wall issue, potentially."
Armen Panossian, Oaktree Aug'23

"Yield… between secured and unsecured bonds… testing all-time highs… that spread gap has likely peaked."
Lotfi Karoui, Goldman Sachs Jun'23

"Companies are essentially 'living paycheck to paycheck… Essentially, the market is living on the edge of a payment default cycle."
Lincoln International, Jun'23

"Default rate isn't as indicative of conditions as in years past, because of investor creativity… pushing out defaults or eliminating them"
Jim Wiant, Capital Four US Aug'23

"Structural impediments to lower prices… bullishness of retail investors and institutional investors to sell and recognize losses"
Dan Zirwin, Arena Investors Aug'23

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Faculty

Jason S. Brookner is a partner with Gray Reed & McGraw, P.C. in Dallas and is the firm's Bankruptcy Practice Group Leader. He focuses his practice on advising debtors, buyers, creditors, trustees, committees, lenders and other constituents in all aspects of distressed, insolvency and restructuring scenarios. Mr. Brookner has worked on complex cases in many industries, including oil and gas, manufacturing, distribution, health care, poultry and meat processing, metals trading and restaurants (including fast casual and quick-service). He has been listed in *Chambers & Partners USA* as one of the leading bankruptcy/restructuring lawyers in Texas every year since 2005, and he recently was recognized for his important role in the *Life Partners Holdings, Inc.* case, which was named the 2017 "Turnaround of the Year" in the large company category by the Turnaround Management Association. Mr. Brookner received his B.A. from the University of New York at Binghamton and his J.D. from Hofstra University School of Law, where he was the articles editor of the *Hofstra Property Law Journal*.

Jennifer C. Hagle is a transactional bankruptcy lawyer with Sidley Austin LLP in Los Angeles and has over 30 years of experience representing clients in bankruptcy and out-of-court restructurings. Her practice principally focuses on representing holders of senior secured, mezzanine and subordinated debt in both public and private middle-market and large cap deals. Her clients include banks, hedge funds and other financial institutions in a wide range of industries, including aviation, media, clean energy (ethanol and biofuels), coal and natural gas, technology, internet gaming, retail and restaurants, health care, hospitality, real estate and for-profit higher education. Ms. Hagle also has significant experience in the area of corporate finance, having represented a number of lenders and borrowers with respect to loan originations and merger and acquisition transactions in nondistressed deals. In 2017, she was named a Fellow of the American College of Commercial Finance Lawyers (ACCFL), and the American College of Bankruptcy named he as a Fellow of its 2015 class and as a regent for the Ninth Circuit in 2020. She is also a contributing author of *Collier's Bankruptcy Practice Guide*. Ms. Hagle's work has been recognized in *Chambers USA*: Bankruptcy/Restructuring – California (2008-20), *Who's Who Legal: Restructuring and Insolvency* (2016-20), *The Best Lawyers in America* (2013-20), *Southern California Super Lawyers* (2012-20) and *Southern California's Best Lawyers* (2019). She is a firmwide co-chair of SidleyWomen and is a member of the Women's Leadership Council, American Bar Association's Business Law Section and the Financial Lawyers Conference, and she is a past chair of the California State Bar Insolvency Law Committee. In addition, she serves on the UCLA Communication Studies Department Board of Visitors and the UC Hastings College of the Law Board of Trustees. Ms. Hagle received her B.A. from UCLA in 1983 and her J.D. from the University of California, Hastings College of Law in 1987.

Jordan A. Kroop is an attorney with Pachulski Stang Ziehl & Jones in its New Yoirk office, where he represents debtors, official committees, acquirers and significant creditors in chapter 11 matters involving publicly traded and privately held companies throughout the nation. He is a Fellow of the American College of Bankruptcy and enjoys a national reputation for representing clients in such diverse industries as manufacturing, real estate development, construction, hospitality, food and beverage, gaming, health care and technology. Among the many prominent chapter 11 matters he has handled, Mr. Kroop represented the Russian Tea Room and the NHL's Phoenix Coyotes in

their chapter 11 cases. He also represented the Boston Celtics and the Milwaukee Bucks in reorganization matters. Mr. Kroop has represented debtor-sellers as well as strategic acquirers in chapter 11 asset sales throughout the country in transactions totaling more than $1 billion. In addition, he is an adjunct professor of law, teaching information privacy and advanced chapter 11 practice at Arizona State University's Sandra Day O'Connor College of Law. He also served as a lecturer on international commercial arbitration in Salzburg, Austria, for University of the Pacific's McGeorge School of Law in 2010 and 2011. Mr. Kroop was listed in *Lawdragon*'s 2023 and 2022 "500 Leading U.S. Bankruptcy and Restructuring Lawyers" and the 2020 "500 Leading Global Restructuring & Insolvency Lawyers," he was named in *The Best Lawyers in America* in Phoenix for "Bankruptcy and Creditor/Debtor Rights/Insolvency and Reorganization Law Lawyer of the Year" in 2017, and he was named a *Southwest Super Lawyer* from 2007-21 (he also was ranked in its Top 50 from 2019-21). In addition, he was one of 12 "Outstanding Young Bankruptcy Lawyers" in the U.S. by *Turnarounds & Workouts* in 2000, and was ranked "Superb" (10 out of 10) by Avvo.com. In 2007, he won an *ABI Journal* Publication Award. Mr. Kroop is rated AV-Preeminent by Martindale-Hubbell. He received his A.B. *magna cum laude* from Brown University and his J.D. from the University of Virginia.

Thomas J. Salerno is a partner in the Bankruptcy and Creditors' Rights practice at Stinson LLP in Phoenix, where he helps private and publicly traded companies in a broad range of industries continue operations as they negotiate restructuring plans. Mr. Salerno has advised lenders, distressed companies, committees and asset-acquirers in bankruptcies and out-of-court settlements. He works with a global roster of clients from an array of industries, including casinos, hotels, real estate, sports, tech, power-generation, agribusiness, construction, health care, manufacturing, airlines and franchising. He also is an adjunct professor and prolific author and lecturer, writing for both practitioners and corporate executives. Mr. Salerno has represented parties in insolvency proceedings in 30 states and five countries. He has been involved in restructurings in the U.S., U.K., Germany, France, Switzerland, and the Czech and Slovak Republics. In addition, Mr. Salerno taught comparative international insolvency at the University of Salzburg and Gray's Inn School of Law in London, and he has been a guest lecturer at the Eller MBA Program for the University of Arizona. Mr. Salerno has served as an expert witness on U.S. insolvency law in litigation in Germany, and represented Coyote Hockey LLC, the owners of the Phoenix Coyotes of the National Hockey League (NHL), in historic bankruptcy proceedings that resulted in an unprecedented solution: the NHL purchasing one of its own teams for the first time in the league's 90-year history. He headed the U.S. delegation to the Czech Republic in advising the Czech Government in the historic revamping of its bankruptcy law, which took effect in January 2008, and he has also advised on revamping insolvency laws in the Dominican Republic and Costa Rica. Mr. Salerno is a member of the UNCITRAL working group on its Insolvency Law Reform Project, completed in early 2007. He is a former ABI Board and Executive Committee member, a past director of the American Board of Certification, a Fellow of the American College of Bankruptcy, and a member of the Plan Issues Advisory Subcommittee for ABI's landmark Bankruptcy Review Commission. Mr. Salerno received his B.A. *summa cum laude* from Rutgers University and his J.D. *cum laude* from Notre Dame Law School, where he served as an editor of the *Notre Dame Law Review*.

Adam T. Titus is a senior director with Alvarez & Marsal in Scottsdale, Ariz., and specializes in operational turnaround, strategic capital structure alternatives advisory, liquidity management, mergers and acquisitions, private placement financings and balance-sheet restructuring. He has spent 10 years working in financially stressed and distressed situations, and he specializes in the formulation

and execution of restructuring strategies for companies, their creditors and existing ownership. Mr. Titus has been involved in various semiconductor-related financial advisory assignments, including Conexant Systems, a leading fabless provider of innovative semiconductor devices, and Isola USA Corp., a global developer and manufacturer of high-performance base materials (laminates). He also was engaged in the sale marketing process at Conexant and in operational turnaround and financial restructuring at Isola. Mr. Titus has advised healthy middle-market public and private companies in the review of strategic alternatives and acquisition advisory to maximize shareholder value, including the sale of SAES Pure Gas a leading manufacturer of UHP gas systems servicing the semiconductor market, which was closed at a valuation above initial offers. In his role at SAES Pure Gas, he led the marketing process, sell-side diligence and documentation/execution. In addition to company-side representation, Mr. Titus also provided creditor advisory services in the Relativity Media and Brookstone bankruptcies. Prior to joining A&M, he was an investment banker with Wachovia Securities in its leveraged finance group, engaged in the underwriting and execution of leveraged loans and high-yield debt offerings. He also was an associate with Liberty Lane Partners, a middle-market private-equity firm. Mr. Titus is an active member of the Association of Insolvency & Restructuring Advisors and Big Brothers Big Sisters of Central Arizona. He received his Bachelor's degree in finance, with a minor in information technology, from Bentley University.